

UNITED STATES DEPARTMENT OF INTERIOR
Bureau of Land Management
Colorado State Office
2850 Youngfield St.
Lakewood, CO 80215
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In Reply Refer To:
1400-735 (CO-953)(P)

EMS TRANSMISSION 08/07/2003
Instruction Memorandum No. CO-2003-037
Expires: 09/30/04

To: All Employees

From: State Director

Subject: Employees Serving as Officers in an Outside Organization

This Instruction Memorandum (IM) establishes Bureau of Land Management (BLM), Colorado State Office policy for employees who serve as officers in outside organizations. The term officer includes positions such as President, Vice-President, Secretary, Treasurer, Trustee, Board of Director, Ex-Officio Officer or Director, and any other position that carries with it a trusteeship responsibility for the organization. Outside organizations include but are not limited to such groups as professional associations, charitable organizations, and business associations such as the Rotary Club and the Kiwanis Club. It also includes organizations for which the officer is paid or not. This policy is consistent with the policy established by the Department of the Interior Ethics Office and applies to all employees.

Serving as an officer in a non-Federal organization can promote individual growth and development as well as enhance the ability of BLM to accomplish its mission. However, BLM programs and operations must be the primary beneficiary of the employees' participation. Employees will not be authorized to perform outside work of any kind that would tend to influence impartial judgment on any matters coming before the employee in the course of his or her official duties; e.g., working with organizations that may seek funding from the BLM or bid for contracts with the BLM.

Employees may serve in outside organizations under one of the following three circumstances:

- The employee participates in the outside organization in his or her private capacity (without the use of his or her official title) and not on Government time.

- The employee participates in the outside organization in his or her private capacity; however, the supervisor allows official time for the employee to attend an outside function of the association, such as a meeting or convention, when the supervisor determines that it is in the best interest of the Government.
- The BLM requires that the employee participate in the outside organization in his or her official capacity, as a representative of the BLM.

All employees who are required or who wish to serve as an officer in a private sector organization while on official Government duty time must:

- Have a written Memorandum of Understanding (MOU) between the Bureau of Land Management and the organization in which the employee is required or desires to serve as an officer. (See attachment 1 for a sample MOU);
- Have a waiver of the conflict of interest prohibition at 18 U.S.C. 208(b) signed by the Deputy Ethics Counselor. (See attachment 2 for a sample waiver memorandum); and
- Secure training from the State ethics counselor.

Employees who are currently serving as an officer in a private sector organization without an approved MOU and waiver are required to obtain the appropriate documentation within sixty days of the date of this memorandum.

Questions regarding this policy or the procedures outlined in this policy may be directed to Ricki Stephenson on (303) 239-3938. The preparation of the MOU and waiver should be done with Ms. Stephenson's assistance.

Signed by
Douglas M. Koza
Acting State Director

Authenticated by
Don Snow
EMS Operator

2 Attachments

- 1 - Sample MOU (3 pp)
- 2 - Sample Waiver (3 pp)

Sample MOU
Memorandum of Understanding
between the
Bureau of Land Management
and the
(Name of Outside Organization)

1. This document sets forth an agreement between the BLM and the (organization name) concerning the service of (employee name) as an officer in the (organization name) as part of his/her official government duties.

2. The primary beneficiary of (employee's name) service as an (organization name) officer is intended to be the BLM. It is expected that the benefits to the BLM will include, but not be limited to the following:

(Suggested benefits:)

- a. Acquisition of state-of-the-art technical information about (name subjects);
- b. Knowledge about organizational arrangements and relationships of organizations with which the BLM interacts, in order to enhance the working relationships between the BLM and such other organizations;
- c. Improved understanding of current issues in the (name of field of endeavor) that concern BLM missions and operations;
- d. Utilization of professional networks and channels to disseminate information relevant to the accomplishment of BLM missions; and
- e. Utilization of other mechanisms to facilitate accomplishment of BLM missions, functions, and processes, such as meetings, conferences, symposia, and publications.

In order to avoid the possibility of an actual or apparent use of public office for private gain, when official time is used for service as an officer in the (name of organization) the following principles will apply.

- a. Federal employees may not represent anyone other than the United States before an agency or court in connection with a particular matter in which the U.S. is a party or has a direct and substantial interest (18 U.S.C. 205).
 - b. Federal employees are required to refrain from working on particular matters as a Government employee when the employee is serving as an officer in a private organization and the organization in which he/she is serving has a financial interest in those Government matters (18 U.S.C. 208).
 - c. If a Federal employee's participation in a project undertaken in conjunction with a private organization was done as a part of his/her official duties, the employee is prohibited from sharing in any compensation by the dual compensation provisions of law (18 U.S.C. 209).
 - d. Federal employees are prohibited from using official time and government equipment to instigate and generate lobbying activity on any issue pending before or of interest to the Congress (18 U.S.C. 1913).
 - e. Federal employees are prohibited from controlling or assuming any measure of practical responsibility for the fund raising activities of private individuals or organizations (E. O. 12731).
4. The relationship between the BLM and the (organization name) addressed in this document is intended to enhance service to the American public through more efficient application of BLM programs. All actions should be directed toward attainment of that mutually beneficial goal.
5. The foregoing is not intended to impose on the (organization name) any obligations or restrictions, other than an obligation to respect the limitations described above on the activities and function of, and benefits which may be received by, nor does it constitute a representation or warranty by the (organization name) as to the benefits which the BLM will receive in fact from (employee's name) service as an officer in the (organization name). The (organization name) does not assume any obligation to enquire into or enforce (employee's name) compliance with paragraph 3c. above.
6. This MOU will become effective upon signature of the approving officials of the respective agencies/organizations entering into this MOU. The terms of this MOU will remain in effect until (date of termination). This MOU may be terminated at any time by mutual agreement or by 30 days advance written notice by either party.

Employee's signature below certifies his/her understanding of the provisions of this MOU.

(Signature of Employee)

Date

(Signature of Supervisor)

Date

(State Assistant Ethics Counselor)

Date

(Signature of State Director)

Date

(Signature of Organization's Representative)

Date

(Signature of Deputy Ethics Counselor)

Date

Attachment 1-3

Waiver Sample

Memorandum

To: Deputy Ethics Counselor

From: State Director

Subject: Conflict of Interest Waiver for (name of employee)

The purpose of this memorandum is to request that you grant (name of employee) a waiver of the criminal conflict of interest provisions that may apply to (his or her) service in an official capacity as (an officer or a member of the board of directors, or other position) of an outside non-profit organization. The need for the waiver is discussed below.

The criminal conflict of interest statute, 18 U.S.C. 208(a), requires that an employee refrain from participating personally and substantially in an official capacity in any particular matter that will have a direct and predictable effect on the financial interests of any organization in which the individual serves as an officer, director, trustee, or employee.

In the absence of: (1) specific statutory authority placing a federal employee in an officer or director position in an ex officio capacity, (2) a release of fiduciary obligations by the organization (if permitted by state law), or (3) a waiver of the requirements of section 208(a), the conflicts statute effectively would preclude (the employee's) service, as an official duty activity, as (officer, director, or other position) of (name of organization).

(Describe position and organization). (Describe relationship of organization, if any, to BLM programs or operations).

Inasmuch as (the employee's) (appointment, election, or selection) as (officer, director, or other position) of (name of organization) is not pursuant to a statute or release of fiduciary obligations, (he or she) has requested that you, as the official to whom waiver authority is delegated, authorize (his or her) participation in certain particular matters that may affect the financial interests of (name of organization). Under section 208(b)(1), a waiver may be granted if the official to whom waiver authority is delegated determines that the disclosed financial interest is not so substantial as to be deemed likely to affect the integrity of the employee's services to the Government.

In the course of (his or her) assigned duties as (employee's government title), the following types of particular matters potentially could come before (the employee) for (his or her) personal and substantial participation: (1) particular matters of general applicability, such as legislation, regulation, or policy, that may affect the financial interest of (name of organization) as a member of a class of similarly situated entities; (2) matters that affect one or more of the underlying holdings in the investment portfolio of (name of organization); (3) particular matters involving specific parties or specific party matters, such as grants, contracts, application approvals, that specifically involve (name of organization) or otherwise affect its financial interest; or (4) other miscellaneous matters involving the conduct of the organization's affairs and BLM support.

While performing, as an official duty activity, the usual and customary duties of the position of (an officer or director or another position) of an outside organization, any actions taken, either in the federal workplace or at the organization, that affect the financial interest of the outside organization are deemed official matters to which section 208(a) may apply. For example, such actions may include: (1) requesting that official travel funds be spent or other government resources be utilized for the employee to conduct the affairs of the organization; (2) signing a training authorization to use BLM funds to pay for a subordinate to attend a seminar or other meeting of the organization; (3) speaking as an official duty activity, or directing a subordinate to speak, at any seminar or other meeting of the organization where attendance fees are charged; (4) participating as an official duty activity in fund raising activities of the organization; or (5) providing advice and consultation with respect to, or otherwise conducting, the business affairs of the organization. While the financial impact may be insignificant, under well-settled precedent, section 208(a) has no de minimis aspect.

Accordingly, if approved, the requested waiver will apply fully to the employee's participation in an official capacity in any particular matter that will directly and predictably affect the financial interest of (name of organization), EXCEPT the following particular matters, as to which (the employee) (has recused or has committed to recuse):

(Identify particular matters to which the waiver is NOT intended to apply, e.g., grants to or contracts with the outside organization. In unique circumstances a waiver might be appropriate for participation in a grant, contract, or other specific party matter. But absent a strong justification, such matters are likely to be standard exceptions to this waiver for which a recusal will be required. If no exceptions are intended, state No exceptions to this waiver are intended to apply, at this point in the document and describe below the justification in detail).

I believe that a waiver is justified for the following reasons:

First, because (the employee) would serve in (the outside organization) as an assigned official duty activity, there is greatly diminished risk that the integrity of the services that the government expect would be affected. (The employee's) position in the outside organization is fully known to the BLM. Moreover, the BLM already has determined that, to a significant degree, the interests of the BLM and the interests of (the organization) are consonant; the BLM expects that the interests of the BLM and the interests of the BLM and the interests of (the organization) both can be furthered through the performance of the (the employee's) official duties.

Second, most if not all of the particular matters in which (the employee) would participate would not have a significant effect on the financial interests of (the organization). (If the employee will have no involvement in any BLM grants, contracts, or other financial support to the organization other than the use of government travel or training funds and will not be involved in regulatory or investigatory matters having a significant financial impact on the organization, state this fact here).

(If the employee were expected to be involved in more problematic matters that involve funding of the organization or regulatory or investigatory matters that significantly affect the financial interests of the organization, a stronger justification for waiver would be needed. Such matters can pose a greater risk of a conflict of interest, and consequently the justification for a waiver in such cases would have to be explained in greater detail. Any information bearing on the magnitude of the financial impact (for example, the size of a grant or contract) would be relevant. Also, it may help to discuss any limits on the employee's involvement in the matter (for example, whether the employee is subject to significant supervision or is only involved in a limited aspect of the matter). Moreover, if the matter involved a regulation, policy statement, or other matter of general applicability, this should be noted, as such matters typically are less problematic).

The employee understands and agrees that, as an official duty activity, no separate compensation may be received from the outside organization in connection with (his or her services as its (officer, director or other position).

(State any other facts, commitments, terms, or conditions relevant to the appointing official's assessment of the request).

Decision:

_____ Waiver granted, subject to the terms and conditions stated above, based on my determination, made in accordance with 18 U.S.C. 208(b)(1), that the disclosed financial interests are not so substantial as to be deemed likely to affect the integrity of the service which the government may expect from the employee.

_____ Waiver denied.

Deputy Ethics Counselor
Bureau of Land Management

Date

Confirmed and Acknowledged:

Name of Employee

Date

